

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

January 29, 2007 Session

**BARBARA MITCHELL vs. MILAN SEATING SYSTEMS, assumed name
for INTIER AUTOMOTIVE SEATING OF AMERICA, INC. ET AL.**

**Direct Appeal from the Chancery Court for Gibson County
No. 16231 George R. Ellis, Chancellor**

No. W2006-01497-SC-WCM-WC - Mailed September 26, 2007; Filed January 30, 2008

In this case, the employer appeals the judgment of the trial court, which awarded a twelve percent permanent partial disability to the employee's left arm and found that the employee provided timely notice of her injury pursuant to Tennessee Code Annotated section 50-6-201(b)(1). At trial, the employee contended that she sustained a gradually occurring injury from her work with the employer over a fifteen-year period, causing ulnar nerve neuropathy in her left elbow. The employer argues on appeal that the employee failed to carry her burden of proof as to causation and did not provide timely notice of the injury to the employer. After careful consideration of the record in this case, we affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2005) Appeal as of Right;
Judgment of the Trial Court Affirmed.**

JANICE M. HOLDER, J., delivered the opinion of the court, in which JAMES F. BUTLER, SP. J., joined. ROBERT E. CORLEW, SP. J., dissenting.

P. Allen Phillips, Jackson, Tennessee, for the Appellant, Milan Seating Systems, assumed name for Intier Automotive Seating of America, Inc.

Jay E. DeGroot, Jackson, Tennessee, for the Appellee, Barbara Mitchell.

MEMORANDUM OPINION

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Barbara Mitchell ("Mitchell"), worked for the defendant, Milan Seating Systems ("Milan Seating"), for over fifteen years. Mitchell attended school through the tenth grade and later earned her general equivalency degree. She has no vocational training. Prior to working for Milan Seating, Mitchell was employed at Kellwood Manufacturing for over twenty-three years as a sewing machine and buttonhole machine operator. While employed at Milan Seating, Mitchell

worked in similar jobs, all of which required repetitive actions of pushing, pulling, lifting, and threading machines. Mitchell left her employment at Milan Seating on September 10, 2001, and did not seek employment elsewhere.

On September 4, 2002, approximately one year after leaving her job at Milan Seating, Mitchell complained to her doctor, Dr. David Johnson, regarding pain in her left elbow.¹ Specifically, Mitchell complained that she experienced shooting pains from her elbow into her left hand. Dr. Johnson found that the ulnar nerve in Mitchell's elbow was significantly inflamed or compressed. Mitchell returned to Dr. Johnson on November 13, 2002, after an injection to relieve inflammation in the elbow did not help her symptoms. Dr. Johnson recommended a nerve conduction test because he found Mitchell's condition was gradually worsening.

On November 18, 2002, Dr. Ron Bingham performed a nerve conduction test on Mitchell's left elbow. The test showed a moderate ulnar nerve neuropathy. On November 21, 2002, Mitchell returned to Dr. Johnson to begin treatment.

Mitchell delivered written notice to Milan Seating dated December 6, 2002, stating that she had been diagnosed on November 18, 2002, by Dr. Bingham with an injury to her ulnar nerve. The notice asserted that Mitchell's years of work at Milan Seating were the cause of her injury and that she would be claiming workers' compensation benefits for the condition.

In his medical testimony, Dr. Johnson identified Mitchell's work history in the sewing industry, including her employment with Milan Seating, as a "possible cause" of her injury. Dr. Johnson also testified, however, that he could not state with a reasonable degree of medical certainty that the elbow condition was caused by her work activities because the symptoms did not appear while Mitchell was employed at Milan Seating.

An independent medical examination was performed on Mitchell's elbow by Dr. Joseph Boals. Dr. Boals also found that Mitchell's ulnar nerve was significantly inflamed or compressed. In addition, Dr. Boals found that Mitchell had decreased sensation in the ring and small fingers of her left hand. After reviewing the results of Dr. Bingham's nerve conduction test, Dr. Boals diagnosed a mild entrapment neuropathy of the ulnar nerve, resulting in a permanent impairment of five percent to the left arm.

Dr. Boals testified that Mitchell's condition is the type of injury that may occur gradually over time and is consistent with the work she performed for Milan Seating. Dr. Boals also testified, however, that Mitchell's failure to complain about the symptoms in her left elbow until one year after ending employment with Milan Seating could be a significant factor in determining causation. Dr.

¹ Dr. Johnson had been treating Mitchell for other work-related injuries since August 24, 2001. Mitchell instituted a civil action against Milan Seating for these injuries to her hands and thumbs allegedly sustained during her employment. Mitchell v. Milan Seating, No. W2006-01499-SC-WCM-WC (release pending).

Boals stated, “what’s important is [Mitchell] must associate the symptoms with the work itself and nothing outside the work.”

Mitchell testified that there were no possible intervening causes that could account for her injury from the time she ceased working for Milan Seating to the time she was diagnosed. Milan Seating provided no testimony to rebut Mitchell’s testimony, and the trial court found Mitchell to be a “very credible witness.”

After weighing this evidence, the trial court found that Mitchell sustained a permanent impairment of twelve percent to her left arm caused by her employment with Milan Seating.

ANALYSIS

Our review of the trial court’s findings of fact is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The trial court’s conclusions of law are reviewed without any presumption of correctness. Watt v. Lumbermens Mut. Cas. Ins. Co., 62 S.W.3d 123, 127 (Tenn. 2001).

Causation of a work-related injury must be shown by medical evidence. Tindall v. Waring Park Ass’n, 725 S.W.2d 935, 937 (Tenn. 1987). While absolute certainty is not required, the proof of the causal connection may not be speculative, conjectural, or uncertain. Id.; Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004). All that is necessary to prove causation is a “rational, causal connection to the work.” Braden v. Sears, Roebuck & Co., 833 S.W.2d 496, 498 (Tenn. 1992).

In this case, Dr. Johnson testified that Mitchell’s work at Milan Seating is a “possible cause” of her injury, and Dr. Boals testified that Mitchell’s injury is consistent with the type of work she performed for Milan Seating. Although both physicians expressed some concern regarding causation because Mitchell did not complain of symptoms earlier, they also agreed that the injury could be caused by Mitchell’s employment at Milan Seating.

An award may be based upon equivocal medical testimony that plaintiff’s injury “could be” caused by her employment “when there is also lay testimony from which it reasonably may be inferred that the [employment] was in fact the cause of the injury.” Reeser v. Yellow Freight Sys., Inc. 938 S.W.2d 690, 692 (Tenn. 1997); see also Tindall, 725 S.W.2d at 937. In this case, Mitchell asserted that there was no intervening cause of her injury and that she reasonably believed the injury was caused by her work for Milan Seating. The trial court found Mitchell to be a “very credible witness,” and the trial court is in the best position to evaluate the witness’s credibility. “When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and weight of testimony are involved, the appellate court must extend considerable deference to the trial court’s factual findings.” Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 732 (Tenn. 2002). Mitchell’s testimony, coupled with the testimony of the physicians that Mitchell’s injury could have

been caused by her work at Milan Seating, was sufficient to support the trial court's finding of causation. Further, any reasonable doubt as to the causation of an injury should be resolved in favor of the employee. Phillips v. A. & H. Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004).

In addition, Milan Seating asserts that Mitchell failed to send timely notice of her injury. When an injury is gradual, the employee must notify the employer of the injury within thirty days from the date the employee "[k]nows or reasonably should know that such employee has suffered a work-related injury that has resulted in permanent physical impairment." Tenn. Code Ann. § 50-6-201(b)(1). In this case, Mitchell sent notice within thirty days after she was diagnosed with moderate ulnar nerve neuropathy. Mitchell testified it was at the time of diagnosis that she knew she had suffered a work-related injury. Therefore, we find that Mitchell provided Milan Seating with timely notice of her injury under section 50-6-201(b)(1).

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. The costs of the appeal are taxed to Milan Seating Systems, and its surety, for which execution may issue if necessary.

JANICE M. HOLDER, JUSTICE

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ORDER

This case is before the Court upon the motion for review filed by Milan Seating Systems pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Milan Seating Systems, for which execution may issue if necessary.

PER CURIAM

Holder, J., not participating